CANCELLED

(3)

IN THE H ON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR.

MISC. APPEAL NO. 489 OF 2004

APPELLANT PLAINTIFF : Kamal Soni son of Shri Brijmohan Soni, aged 27 years, resident of Saraju Bagicha Masanganj, Bilaspur, Tahsil & District Bilaspur (C.G.).

VERSUS

RESPONDENTS DEFENDANTS

1. Sakharam aged 89 years son of Karanudas, caste- Satnami, vill. ~~Mudipar~~ Gudipara Bilha Post Bilha, Tah. Bilha, District Bilaspur (C.G.).

2. Ashfak Hussain aged 35 years, son of Kamaruddin by caste- Bohra (Momin) Occupation -Business, Resident of Sadar Bazar, Bilaspur Tahsil and District Bilaspur (CG)

P.R. No. 109 3/04 Presented by Shri R. Bajpai

3. State of Chhattisgarh Through - Collector, Bilaspur (C.G.).

APPEAL UNDER ORDER 43 RULE 1(r) OF CODE OF CIVIL PROCEDURE.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक M.A.489/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

30.7.2004

Appellant by Shri H. B. Agarwal, Advocate.

Respondents No. 1 and 2 by Shri Anant Bajpayee, Advocate.

Heard.

The appellant has preferred this miscellaneous appeal being aggrieved by the order dated 5th April, 2004 passed by the First Additional District Judge, Bilaspur in Civil Suit No. 14-A/2004 whereby learned court below rejected the application filed by the appellant under Order 39 Rules 1 and 2 seeking direction for restraining the alienation of the property by the Respondent No.2 to anybody.

The brief facts leading to filing of this appeal are that the respondent No.1 and his wife were owner of the agricultural land bearing Khasra No. 258 and 259 admeasuring area 0.88 acre and 0.74 acre respectively, total 1.42 acres. He entered into an agreement of sale the property with the appellant on 26.8.2003 at the rate of Rs. 25,000/- per acre and he received Rs. 15000/- as advance money from the appellant. Since the wife of the Respondent No.1 died therefore it was agreed that after mutating his name in the revenue record he would execute the sale deed as the said land was in the name of the Respondent No.1 as well as his wife. However, the Respondent No.1 started avoiding the execution of the sale deed therefore the appellant sent a notice on 29.1.2004 asking the Respondent No.1 to execute the sale deed. In spite of that the Respondent No.1 instead of executing the sale deed in favour of the appellant transferred the said land illegally to the Respondent No.2 by

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a registered sale deed dated 31st January, 2004; against which the appellant protested before the Sub-Registrar on 3rd February, 2004. However, on 17.2.2004 the Respondent No.1 replied the notice of the appellant saying that the agreement of sale between the appellant and Respondent No.1 was later, as there was already agreement to sell of the said land between the Respondent No.1 and 2.

Thereafter the appellant filed a civil suit for specific performance of the contract against the Respondent No.1 as well as challenging the sale deed by the Respondent No. 1 in favour of the Respondent No. 2. Alongwith the civil suit the appellant also moved an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure for grant of interim injunction, which was partly allowed and partly rejected.

I have heard learned counsel for the partics.

Mr. H. B. Agarwal, learned counsel for the appellant argued that the learned trial Court has wrongly rejected the prayer of the appellant that he is not in possession of the disputed land. The appellant alongwith other persons filed affidavit before the trial Court showing the possession of the appellant therefore the trial Court ought to have relied upon those affidavits and should have held that the appellant is in possession.

On the other hand Shri Anant Bajpayee, learned counsel for the Respondents No. 1 and 2 argued that the order of the trial Court is legal and there is no irregularity.

Having heard learned counsel for the parties I have perused the impugned order. A perusal of para-8 of the impugned order reveals that in order to prove his prima facie case and possession the

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appellant filed affidavit of himself and of one Manish Soni and Umesh Dubey in support of the application in which it is mentioned that the appellant is in possession; whereas on the contrary the affidavits were filed by the respondents herein that the appellant is not in possession. Learned lower court after perusing the record observed that there is no mention in the document of agreement of sale dated 26.8.2003 that the possession of the disputed land was handed over to the appellant. Even the notice dated 29.1.2004 sent by the appellant to the Respondent No.1 for executing sale deed does not mention that the appellant is in possession. Apart from that the appellant moved applications alongwith the documents before the S.D.O. (Revenue) Bilaspur as also before the Naib Tahsildar, Bilha in those applications also the appellant had not mentioned that he is in possession and it is an admitted position that the land in question is a open land and ultimately the learned lower Court held that the appellant has failed to prove the prima facie case and rejected the application.

It is true that nothing has been mentioned in the document i.e. the agreement of sale that the possession of the disputed land was given to the appellant. Similarly the appellant has not mentioned in the notice dated 29.1.2004 regarding possession and in the application moved before the S.D.O. and Naib Tahsildar he has not mentioned that he is in possession. As the land in question is an open land and in order to show the possession, after executing the agreement of sale the appellant has not produced any concrete material on record, which may indicate or show that he had taken possession in compliance of the agreement of sale; therefore, I am of

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the opinion that the trial Court has not committed any illegality in arriving at the decision that the appellant has failed to prove his prima facie case as regards the possession on the disputed land and while passing the order on the temporary injunction application the trial Court has exercised its discretionary jurisdiction. The appellate Court has very limited jurisdiction to interfere with the order passed by the trial Court and it can be interfered only when the order passed by the trial Court is perverse for the reason that it is contrary to the evidence & document available on record or contrary to the law and in this case the appellant has failed to establish any of these conditions seeking interference by this Court.

In the result the appeal fails and the same is liable to be dismissed and it is dismissed.

In view of the above order M(C) No. 636/2004 and I.A.No. 1466/2004 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

[पीछे देखिये